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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 133rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 November 1992, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.133/Add.1 and that of the third part (public) appears as document CAT/C/SR.133/Add.2.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3) (continued)

Initial report of the United Kingdom of Great Britain and Northern Ireland: Dependent territories (continued) (CAT/C.9/Add.10)

1. At the invitation of the Chairman, Mr. Steel, Mr. Rankin and Mrs. Walsh (United Kingdom) took places at the Committee table.

2. Mr. STEEL, replying to questions from Mr. Burns, Country Rapporteur - many of which were similar to those raised by other members of the Committee - explained that the term "lawful authority" used on page 62 of the report could, for example, cover the use of force to restrain a violent prisoner or the imposition of corporal punishment when authorized by law; there was no question of authorizing acts that might constitute torture.

3. Mr. Burns had asked whether prisoners in pre-trial detention were separated from those who had been sentenced, and he explained that in certain territories prison regulations required such separation whereas in others, the smaller ones, separation was not possible because of size limitations. In any event he would seek more detailed information on the subject and communicate his findings in writing.

4. With respect to the compensation of victims of torture, he explained that virtually all territories had legislation equivalent to the Crown Proceedings Act of 1946, under which an action could be brought against a Government that was supposed to be responsible for the acts of its agents. However, he was uncertain about the situation in one of the territories, namely, Pitcairn. In territories which had no legislation of that kind, the procedure would be that the Government of the territory would assume responsibility for paying the compensation that one of its agents was ordered to pay. He was unable to say whether all territories had a compensation system in line with that of the United Kingdom, but would transmit the necessary information to the Committee in writing. In all cases, however, provisions of the Penal Code or Code of Criminal Procedure made it possible to order an individual to pay compensation to his victim.

5. The Chairman and Mr. Sorensen had asked whether any cases of torture had been recorded recently in the United Kingdom's dependent territories. The reply was a categorical no; no case of torture had been reported since well before the entry into force of the Convention.

6. He was unsure whether legal aid was officially available in all territories, but observed that the Constitutions of territories which comprised a chapter on human rights in connection with guarantees of a fair trial stated that anyone who was charged with an offence could have himself represented by a lawyer at State expense. Even in the absence of a provision of that kind, he believed that in the event of a serious offence the defence of the accused was paid for by the State.

7. Corporal punishment existed in certain territories. It was imposed as a disciplinary measure for detainees and was also practised in the schools. Summarizing the situation in the various territories, he explained that in Anguilla corporal punishment was a penalty; four young men had been sentenced to such punishment in 1992; it was also practised in the schools. In the British Virgin Islands, corporal punishment could be ordered but had not been inflicted on anyone since 1985; corporal punishment was, however, practised in the schools. In the Cayman Islands the law made no provision for corporal punishment although it could be meted out to a detainee as a disciplinary measure; it was, however, practised in the schools. In the Falkland Islands corporal punishment did not exist. In the schools it was authorized for boys of under 11 with the consent of their parents. There was no corporal punishment in Gibraltar. At Montserrat it had been abolished on 26 June 1992; it was, however, practised in schools. In Pitcairn and St. Helena there was no corporal punishment. In the Turks and Caicos Islands it existed and was applied; corporal punishment was also practised in the schools.

8. The Government of the United Kingdom deplored the maintenance of corporal punishment and had urged the territories to abolish it. Some had done so whereas others had not. It would appear that, in the territories of the Caribbean region, tradition and public opinion were in favour of the practice and certain independent States of the region also authorized it. It was difficult for the United Kingdom to bring pressure to bear in the matter since it was one that was within the competence of the territories themselves.

9. Replying to a question concerning detention incommunicado and pre-trial detention, he explained that none of the territories authorized pre-trial detention in any form whatever save during states of exception. A person could be arrested and detained only if he was legitimately suspected of having committed a criminal offence or for purposes of extradition. When a person was arrested he had to be brought before a court as soon as possible.

10. With respect to detention incommunicado, he referred members of the Committee to the Judges' Rules (he had circulated copies) and added that it was authorized only in very special circumstances and for a very limited time.

11. As for the powers granted to the military, he explained that, strictly speaking, most of the territories did not have any armed forces. More often than not they had a volunteer reserve whose function was above all ceremonial. Where armed forces were maintained they had no police powers or power of arrest save in very exceptional circumstances (riots, for example). In such cases all the rules concerning arrest and questioning were applicable to the military.

12. The time that elapsed between a person's arrest and his being brought before a court varied. In Anguilla, for example, a person who had been arrested was brought before a court "promptly". In practice, it was the European Court's case law that prevailed and the maximum time was in general 48 hours.

13. As for the question whether there was an office elsewhere than in Gibraltar to which complaints against the police could be addressed, he said he was unsure and would communicate the reply to the Committee in writing. He

drew attention to paragraph 32 of the section of the report dealing with the Cayman Islands where it was stated that, in the case of allegations against the police, there were provisions for independent internal investigation. Although that provision was not embodied in the legislation, it was systematically applied.

14. Replying to a question from the Chairman, he said that the competent authorities of Anguilla acted in accordance with the provisions of article 7 of the Convention when they embarked upon a criminal investigation; in that respect, the information given in paragraph 25 of the report dealing with Montserrat also applied to the procedure followed in Anguilla. More generally, it could be said that the Constitutions in force in all the dependent territories stated that any person accused of a criminal offence was entitled to a fair hearing within a reasonable time and to be represented by a lawyer at all stages of the proceedings where necessary.

15. Replying to a further question from the Chairman, he said that effect had been given to article 8 of the Convention in accordance with United Kingdom legislation on extradition, as applied in Anguilla. Under that legislation, and in the context of arrangements with a State that was also a party to the Convention, a person could be extradited if the offence for which he was sought was an act of torture prohibited by law. He added that most of the territories intended to adopt legislation based on the criminal legislation in force in the United Kingdom which established extensive machinery for international cooperation in criminal cases.

16. In reply to the Chairman's last question, on the admissibility of confessions obtained under duress, he agreed that the last sentence of paragraph 38 of the section of the report dealing with the Cayman Islands needed clarification: "Answers may be inadmissible in evidence at the subsequent trial of that suspect if these rules are disobeyed". He explained that, in ordinary law, a basic condition for the admissibility of confessions or statements unfavourable to their author was that the latter should have expressed himself of his own free will and not because he was forced to do so. If it was alleged that confessions had been obtained or could have been obtained under duress, the court was required to declare them inadmissible unless the prosecution was able to prove that that had not been the case. The court had no discretionary power in the matter except in cases where, even if the confession had been voluntary, the way in which it had been obtained had not been in conformity with the law.

17. Referring to Mr. Sorensen's question about the training of medical personnel and police officials in the dependent territories, he explained that those two categories of personnel were trained in accordance with international standards on the subject. There was therefore every reason to believe that their training enabled them to detect any signs of ill-treatment or torture on the persons with whom they came into contact in the course of their duties.

18. Replying to a question from Mr. Ben Ammar on how such personnel were informed of the rules applicable in human rights matters, he explained that the relevant texts were disseminated and available in all medical centres and police stations. With reference to Mr. Ben Ammar's reference to a regular

flow of immigrants into Gibraltar, he said that the British Government had no information concerning any traffic involving legal or illegal immigrants into Gibraltar, and that the allegations made on the subject were unreliable.

19. Mr. EL IBRASHI, referring to paragraphs 35 and 36 of the report dealing with the Cayman Islands, suggested that civil law might have been confused with criminal law. Paragraph 35 stated that "... the Courts of the Cayman Islands have the power to order a convicted offender to pay compensation to any person injured by any criminal act." How could a criminal penalty be replaced by civil compensation? Was it the court that decided that the guilty party should compensate the victim for any acts of torture committed, or was it the victim who could bring civil proceedings in order to obtain redress for the damage he had suffered? Were there any cases of double compensation, when, for example, the court ordered the guilty party to compensate the victim and when the latter in turn brought a civil action to obtain redress?

20. Mr. STEEL (United Kingdom) agreed that the wording of paragraphs 35 and 36 was rather ambiguous. He explained that the court had the power to do two things, namely, to punish the guilty party and to compensate the victim. It could therefore sentence the guilty party to imprisonment and in addition order him to compensate the victim. There was no double compensation because a civil court in which the victim had brought an action to obtain redress for any wrong suffered would take into account the fact that part of that wrong had already been compensated under the criminal procedure.

21. The CHAIRMAN thanked Mr. Steel for the very comprehensive information he had provided and invited members of the Committee to consider their conclusions at a closed meeting.

22. Mr. Steel, Mr. Rankin and Mrs. Walsh (United Kingdom) withdrew.

The first part (public) of the meeting rose at 4.15 p.m.